No. 78-959

In the Supreme Court of the United States

OCTOBER TERM, 1978

VINCENT R. PERRIN, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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Petitioner's opening brief in this case was 15 pages in length and cited only nine authorities. Petitioner's reply brief is an extensive document citing a substantial number of new authorities and raising contentions that the government has not had an opportunity to address. The government submits this reply brief to respond to these new and belated assertions.

1. Petitioner argues (Reply Br. 4-10) that in 1961 the word "bribery" extended no further than

its common law definition and that, while the other terms appearing in 18 U.S.C. 1952(b)(2) should be given a generic interpretation to reflect contemporary meanings, the term "bribery" must be given a restrictive construction. In support of that argument, petitioner asserts that only 13 states had general commercial bribery laws in 1961. However, an additional 12 states had criminal commercial bribery statutes focused on employees in particular lines of business. See Note, *Control of Nongovernment Corruption By Criminal Legislation*, 108 U. Pa. L. Rev. 848, 849, 864, 866 (1960). Thus, one half of the states in the nation had enacted criminal commercial bribery laws prior to 1961. See *United States* v. *Niedelman*, 356 F. Supp. 979, 982 (S.D.N.Y. 1973). In addition, 32 states had criminal statutes prohibiting bribery in sporting events. See Note, *supra*, 108 U. Pa. L. Rev. at 865, 867. In all, 43 states had criminal laws forbidding different kinds of non-official bribery. See the appendix to our initial brief. Nor has petitioner denied that, prior to 1961, Congress had enacted a substantial number of criminal laws prohibiting non-official bribery. See our initial brief at 24-26.[1]

Because Congress drafted the Travel Act in such a way that it applies to interstate schemes violating

[1] Although petitioner argues that these commercial bribery laws are different from official bribery laws because they have greater specificity (Reply Br. 5-6), official bribery laws also define with particularity the class of regulated persons and the kinds of activities that are forbidden. See 18 U.S.C. 201.

state or federal bribery laws, without limitation on the type of bribery, the widespread existence of state and federal laws designating private corruption as a form of criminal bribery is a strong indication that the Travel Act should have a comparable reach. It should not be assumed that Congress was ignorant of its own non-official bribery laws or those of the 43 states that had enacted such legislation.[2] Nor should it be assumed that Congress harbored an unexpressed intention to limit the Act to a particular sub-category of bribery when the literal meaning of the word that it selected is generic. See *Webster's Third New International Dictionary* 275 (1961).[3]

[2] See *Cannon* v. *University of Chicago*, No. 77-926 (May 14, 1979), slip op. 17-18: "It is always appropriate to assume that our elected representatives, like other citizens, know the law."

[3] The authorities cited by petitioner do not lend support to the contention that "bribery" is limited to "official corruption." The court of appeals in *United States* v. *Dansker*, 537 F.2d 40, 47 (3d Cir. 1976), expressly rejected the argument that the Travel Act should be so limited, noting that a generic interpretation of the Act "has enabled it to encompass state statutory expansions of the crimes of extortion, bribery and arson over the years, and thus more effectively carry out its purpose of aiding local law enforcement efforts to combat 'pernicious undertakings which cross state lines.'" S. Rep. No. 96-605 (Pt. 1), 95th Cong., 1st Sess. (1977), also relied on by petitioner (Reply Br. 8), shows clearly that Congress views commercial corruption as a form of "bribery." The Senate Report calls for enhanced federal penalties in light of the seriousness of commercial bribery, and refers to *United States* v. *Pomponio*, 511 F.2d 953 (4th Cir.), cert. denied, 423 U.S. 874 (1975), with approval. See *id.* at 738. Petitioner also cites 18 U.S.C. 1961, which defines the expression "racketeering acivity" to include various state law offenses (includ-

Petitioner also argues that commercial bribery is a less serious offense than official bribery under many state laws and should not be treated with comparable severity under the Travel Act (Reply Br. 17-18). That contention, however, ignores the nature of the offense prohibited by the Travel Act. The Act is concerned with the use of interstate facilities to carry on bribery, arson, or extortion in violation of federal laws or the laws of 50 different states. Those laws frequently provide differing penalties. But Congress prescribed a uniform federal sanction for persons who use the facilities of interstate commerce to violate such laws.[4]

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ing bribery). It also extends to a number of federal statutory offenses (including those proscribed in 18 U.S.C. 201 and 224 and 29 U.S.C. 186). This statute, enacted in 1970, sheds no light on the congressional purpose underlying the Travel Act, which is drafted in different terms and prohibits different activities. Unlike 18 U.S.C. 1961, the Travel Act contains a single generic reference to "bribery" in violation of state or federal laws and does not list particular statutes. To the extent that it has any relevance here, 18 U.S.C. 1961 is supportive of the government's position because it demonstrates Congress' understanding that racketeers frequently make use of forms of bribery other than official bribery in carrying on their illegal activities.

[4] It is, of course, not unusual for Congress to prescribe substantial penalties for conduct that may be treated with greater lenience under state law, where the conduct involves the use of interstate facilities. See, *e.g.*, 18 U.S.C. 2421 (transportation of women for immoral purposes); 18 U.S.C. 1341 (practicing deceptive schemes through the mails). See also *United States* v. *Pomponio*, 511 F.2d 953, 957 (4th Cir.), cert. denied, 423 U.S. 874 (1975).

Nor is there merit to the argument that commercial bribery is inherently less serious than official bribery. Official bribery can involve small pay-offs to building inspectors or procurement personnel just as commercial bribery can involve small payments to private employees. As the facts in this case demonstrate, however, commercial bribery can also involve well-organized criminal ventures with sophisticated participants playing for large stakes. Commercial bribery—rendered more dangerous through the use of interstate commerce—has the demonstrated potential to cause serious injury to honest business firms as well as as to enrich the syndicate. See our initial brief at 38-41. See also J. Kwitny, *Vicious Circles: The Mafia In The Marketplace* 5-46, 94-99, 202-210, 241-246 (1979).

Although petitioner makes the bare assertion that commercial bribery is not a "feature of organized crime" (Reply Br. 18 n.13), he fails to come to grips with the clear evidence to the contrary that is cited in our initial brief at 38-41. If organized crime is free to use the facilities of interstate commerce to carry on commercial bribery schemes of the kind disclosed by this record, the congressional purpose to cut off the flow of illegal revenues to organized crime would be seriously undermined. As this Court observed in *Kordel* v. *United States*, 335 U.S. 345, 349 (1948), "there is no canon against using common sense in reading a criminal law, so that strained and technical constructions do not defeat its purpose by creating exceptions from or loopholes in it."

While it is true that one can envision relatively insignificant bribery offenses—involving both official and non-official bribery—Congress has made the judgment that use of interstate facilities to promote bribery is a serious threat to the national welfare. It is not appropriate to create exceptions from or loopholes in the statute simply because de minimis violations can be visualized, particularly in a case such as this involving an extensive criminal enterprise.

2. Petitioner also argues (Reply Br. 13-15) that the legislative history is equally supportive of the common law and generic definitions of the term "bribery." He notes that the congressional hearings contain references to both official and non-official corruption. In fact, however, all of the legislative history supports the generic view; none of it supports a restrictive common law interpretation. As we have noted in our initial brief (pages 28-32), the legislative history contains repeated references to non-official bribery, such as bribery of labor union officials and athletes. The existence of other references to official bribery suggests only that Congress recognized that the term bribery properly applies to *both* official and non-official corruption—that is, that Congress understood the contemporary generic meaning of the word bribery. There is not a hint in the legislative history that any Congressman or representative from the Department of Justice believed that the Act should apply only to official bribery. See *United States* v. *Naftalin*, No. 78-561 (May 21, 1979), slip op. 6-7.[6]

3. Petitioner further contends (Reply Br. 10-12) that this Court's decision in *United States* v. *Nardello*, 393 U.S. 286 (1969), provides no support for a generic interpretation of the word bribery. He argues that the Court embraced "blackmail" within the statutory term "extortion" because blackmail had been treated as a kind of extortion under various state statutes. But the same is true of bribery. Numerous federal and state statutes treat commercial corruption as a kind of criminal bribery. Nor is it relevant

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[6] The letter from Deputy Attorney General White, referred to by petitioner (Reply Br. 14), shows that the Department of Justice believed that the Act should apply to official bribery. It does not suggest that anyone believed that private bribery should not also be encompassed. It is clear that Deputy Attorney General White did not entertain any such view, as shown by his subsequent report to Congress on behalf of the Department of Justice stating that the Travel Act applies, in appropriate circumstances, to bribery in sporting events. See our initial brief at 30-31. Although these views were expressed shortly after enactment of the Travel Act, they are identical with those of Senator Keating, who stated during hearings on the bill that became the Travel Act that it would apply to bribery of athletes "if you could prove item of travel with intent." Id. at 30. The interpretation of the Deputy Attorney General, who participated in the process of drafting the Travel Act, is entitled to substantial deference. See, *e.g.*, *United States* v. *Rutherford*, No. 78-605 (June 18, 1979), slip op. 8. The views of the Deputy Attorney General, the Assistant Attorney General (see our initial brief at 32 n.27), and Senator Keating militate strongly against the argument that the Travel Act applies only to "official" bribery.

that commercial and official bribery are often prohibited in different statutes.[7] That was the situation in *Nardello* (393 U.S. at 288-289), but the Court nonetheless adopted a generic interpretation under the Travel Act. See *id.* at 293-296.

The direct relevance of *Nardello* in the present case lies in its conclusion that the word extortion should not be restricted, as it was at common law, to misconduct involving public officials (393 U.S. at 290, 292-293), but rather should extend to those actions "generally known" as extortion. Instead of giving the term extortion "an unnaturally narrow reading," the Court decided that a "generic" definition was most consistent with the purposes of the Act. See *id.* at 295-296. These considerations are directly relevant here: in both popular and legal usage in 1961, the term "bribery" had a generic meaning; and, as noted above, the generic definition is essential to vindicate Congress' purpose—*i.e.*, to deprive organized crime of the use of interstate facilities to carry on bribery schemes that increase illegal revenues.[8]

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[7] Some states prohibit commercial and official bribery in the same statute. See our initial brief at 27 n.23.

[8] While it is true that *Nardello* states in a footnote that "[b]ribery has traditionally focused upon corrupt activities by public officials" (393 U.S. at 293 n.11), the Court did not purport to undertake a full examination of the evolution of the crime of bribery. Even at common law, as petitioner concedes (Reply Br. 4), the term bribery extended beyond the corrupt actions of public officials, reaching corruption of private persons such as voters and witnesses. In England, commercial bribery has been a crime since 1906. See our initial brief at 26-27 n. 22.

Although petitioner protests that a generic interpretation will extend federal jurisdiction over state crimes (Reply Br. 16-17), there can be no doubt that Congress intended to aid local law enforcement officials by condemning use of interstate facilities to carry on activities illegal under local law. This is not a case such as *Rewis* v. *United States*, 401 U.S. 808 (1971), or *United States* v. *Bass*, 404 U.S. 336 (1971), in which local criminal activities had no significant nexus with interstate commerce. Where, as here, the government proves that the defendant used the facilities of interstate commerce for a purpose forbidden by Congress, there is no question of intruding impermissibly into the sphere of state regulation. See *Erlenbaugh* v. *United States*, 409 U.S. 239, 245-247 (1972); *United States* v. *Culbert*, 435 U.S. 371, 379-380 (1978); *Hoke* v. *United States*, 227 U.S. 308, 321-322 (1913).

4. Petitioner finally contends (Reply Br. 19-25) that the statute is unconstitutionally vague in violation of the Due Process Clause, citing *Bouie* v. *City of Columbia*, 378 U.S. 347 (1964). However, the statute presents no vagueness problem. The literal dictionary meaning of the term bribery is generic. Both Congress and the states applied the term generically in a wide variety of criminal laws prior to passage of the Travel Act. The legislative history shows that Congress understood the word bribery in its generic sense, with no Congressman or governmental representative ever suggesting that the term should be limited to its "common law" meaning. Moreover, the dominant statutory purpose strongly supports the

generic construction. Under these circumstances, there is no uncertainty that requires a limiting interpretation.

Petitioner also argues that the decision of the court of appeals operated retroactively and unforeseeably, citing *Marks* v. *United States*, 430 U.S. 188 (1977). However, petitioner received fair warning from the text of the Travel Act, which extends to bribery prohibited by state statute without limitation on its kind. He also received notice that his actions were illegal from the Louisiana commercial bribery statute that triggered application of the Travel Act. This Court's 1969 *Nardello* decision placed petitioner on notice that the Act would not be confined to common law meanings or be given an unnaturally narrow reading. Moreover, prior to petitioner's actions, the United States Court of Appeals for the Fourth Circuit (the only court of appeals to have decided the question) had held unanimously that commercial bribery was covered by the Travel Act. *United States* v. *Pomponio*, 511 F.2d 953 (1975).[9]

The decision of the Second Circuit in *United States* v. *Brecht*, 540 F.2d 45 (2d Cir. 1976), on which petitioner relies, was not handed down until one year after he engaged in the illegal bribery scheme. There was thus no "conflict" in the circuits that could have

[9] Petitioner was well aware that his conduct was wrongful, as the evidence at trial established. See our initial brief at 8-9. There is thus no question of convicting a defendant who believed that his actions were proper. See, *e.g.*, *Boyce Motor Lines, Inc.* v. *United States*, 342 U.S. 337, 340, 342 (1952).

misled petitioner or caused him to believe that his conduct was lawful.[10]

For the foregoing reasons and the reasons stated in our initial brief, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

SEPTEMBER 1979

[10] The present case thus has no similarity to *James* v. *United States*, 366 U.S. 213, 221-222 (1961), where a prior decision of this Court had held that the conduct challenged in the indictment was lawful.

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